

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATION NO. A/NE-LYT/770

- Applicant** : Mr. TANG Wing Wah represented by Mr. HUI Kwan Yee
- Site** : Lot 1677 S.A in D.D. 76, Leng Pei Tsuen, Fanling, New Territories
- Site Area** : About 180 m²
- Land Status** : Block Government Lease (demised for agricultural use)
- Plan** : Draft Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP)
No. S/NE-LYT/18
- Zoning** : “Agriculture” (“AGR”)
- Application** : Proposed House (New Territories Exempted House (NTEH) – Small House)

1. The Proposal

- 1.1 The applicant, an indigenous villager of Hok Tau Tsuen¹, seeks planning permission to build a NTEH (Small House) at the application site (the Site) in Leng Pei Tsuen, Fanling (**Plans A-1 and A-2a**). The Site falls within an area zoned “AGR” on the draft Lung Yeuk Tau and Kwan Tei South OZP No. S/NE-LYT/18. According to the Notes of the OZP, ‘House (NTEH only, other than rebuilding of NTEH or replacement of existing domestic building by NTEH permitted under the covering Notes)’ in the “AGR” zone is a Column 2 use requiring planning permission from the Town Planning Board (the Board).
- 1.2 Details of the proposed NTEH (Small House) are as follows:
- | | |
|-------------------|-------------------------|
| Total Floor Area | : 195.09 m ² |
| Number of Storeys | : 3 |
| Building Height | : 8.23 m |
| Roofed Over Area | : 65.03 m ² |
- 1.3 The applicant has not indicated the usage of the uncovered area. Layout of the proposed Small House (including a septic tank) is shown on **Drawing A-1**.
- 1.4 The Site is the subject of two previously approved applications (No. A/NE-LYT/404 and 547) for Small House developments which were approved by the Rural and New Town Planning Committee (the Committee) in 2009 and 2014 respectively. Details of

¹ District Lands Officer/North, Lands Department (DLO/N, LandsD) advises that the applicant is an indigenous villager of Hok Tau Wai of Fanling Heung.

these previous applications are set out in paragraph 5 below.

- 1.5 In support of the application, the applicant has submitted the application form with attachments (**Appendix I**), which was received on 8.8.2022.

2. **Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in the application form with attachments at **Appendix I** as summarized below:

- (a) the Site is the subject of two previous planning applications. The last approved application (No. A/NE-LYT/547) for the same use was submitted in 2014. Subsequently, two s.16A applications for extension of time for commencement of approved developments were submitted in 2018 and 2021. A fresh application is required as the previous permission could not be further extended; and
- (b) the application for Small House grant has been approved by Lands Department, yet pending execution as the applicant is away from Hong Kong in the midst of pandemic.

3. **Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is the sole “current land owner”. Detailed information would be deposited at the meeting for Members’ inspection.

4. **Assessment Criteria**

The set of Interim Criteria for Consideration of Application for NTEH/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. **Previous Applications**

- 5.1 The Site is the subject of two previously approved applications (No. A/NE-LYT/404 and 547) for proposed Small House developments approved by the Committee in 2009 and 2014 respectively before the adoption of a more cautious approach by the Board.
- 5.2 Application No. A/NE-LYT/404 involving construction of five Small Houses was approved with conditions by the Committee on 23.10.2009 mainly on consideration that the Small House developments were in line with the Interim Criteria in that all the Small House footprints fell within the village ‘environ’ (‘VE’) of a recognised village and there was a shortage of land in meeting the demand for Small House development in the “Village Type Development” zone of the same village at the time of consideration.
- 5.3 Application No. A/NE-LYT/547 was submitted by five applicants for construction of one Small House each. The applicant of the current application was one of the applicants of application No. A/NE-LYT/547 who sought permission to build a Small House at Lot 1677 S.A. The application was approved with conditions by the Committee on 26.9.2014 on similar sympathetic consideration as mentioned in

paragraph 5.2 above. S.16A applications for extension of time for commencement of approved developments were submitted and the permission will be valid until 26.9.2022. As advised by DLO/N, the Small House application was approved in 2012 pending the execution of building licence. Compared with the last approved scheme, there is no change to the footprint and major development parameters of the proposed Small House under the current application.

- 5.4 Details of the previous applications are summarised at **Appendix III** and their locations are shown on **Plan A-2a**.

6. **Similar Applications**

- 6.1 There have been 70 similar applications for Small House developments within the “AGR” zone in the vicinity of the Site in Lung Yeuk Tau and Kwan Tei South area since the first promulgation of the Interim Criteria on 24.11.2000. Among them, 37 applications were approved by the Committee between April 2003 and May 2015 (i.e. before the adoption of a more cautious approach by the Board). The remaining 33 applications including 5 applications located in the vicinity of the Site, were approved between November 2015 and August 2022 (i.e. after the Board’s adoption of a more cautious approach) on consideration that they generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the ‘VE’ and there was a general shortage of land within the “V” zone of the same village in meeting the Small House demand; not incompatible with the surrounding rural and village environment; no significant adverse impact on the surrounding area; and previous/similar applications were approved by the Committee.
- 6.2 Details of the similar applications are summarised at **Appendix IV** and locations of similar applications in the vicinity of the Site are shown on **Plan A-2a**.

7. **The Site and Its Surrounding Areas** (Plans A-1 to A-4)

- 7.1 The Site is:
- (a) covered with grass/trees;
 - (b) located at the southwestern fringe of the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen; and
 - (c) accessible via a local track leading to Sha Tau Kok - Ma Mei Ha.
- 7.2 The surrounding areas have the following characteristics:
- (a) predominantly rural character where existing village houses, sites with planning approvals for Small House developments, vehicle parks, active/fallow agricultural land and tree clusters are found;
 - (b) to the immediate north is active/fallow agricultural land with planning permission for Small House developments. To the further north are some existing village houses, active/fallow agricultural land, vacant land and vehicle parks;

(c) to the east across the local track are active/fallow agricultural land with planning permission for Small House developments and some existing village houses; and

(d) to the south and west are a plant nursery and active/fallow agricultural land respectively.

8. Planning Intention

The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The application has been assessed against the assessment criteria in **Appendix II**. The assessment is summarised in the following table:

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
1.	Within “V” zone? - The Site - Footprint of the proposed Small House	- -	100% 100%	The Site and footprint of the proposed Small House fall entirely within the “AGR” zone.
2.	Within ‘VE’? - The Site - Footprint of the proposed Small House	100% 100%	- -	The Site and footprint of the proposed Small House fall entirely within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen.
3.	Sufficient land in “V” zone to meet Small House demand (outstanding Small House applications plus 10-year Small House demand)?		✓	<u>Land Required</u> Land required to meet the Small House demand in Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 4.53 ha (equivalent to 181 Small House sites). The outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster are 49 ² while the 10-year Small House demand forecast for the same village cluster is 132.

² Among the 49 outstanding Small House applications, 7 of them fall within the “V” zone and 42 straddle or outside the “V” zone. For those 42 applications straddling or being outside the “V” zone, 21 of them have already obtained valid planning approval from the Board.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
	Sufficient land in “V” zone to meet outstanding Small House applications?		✓	<u>Land Available</u> Land available to meet the Small House demand within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster: about 0.79 ha (equivalent to 31 Small House sites) (Plan A-2b).
4.	Compatible with the planning intention of “AGR” zone?		✓	Director of Agriculture, Fisheries and Conservation (DAFC) states that the Site is abandoned. Agricultural activities are active in the vicinity and agricultural infrastructures such as water source and a local track are available. The Site can be used for agricultural activities such as open-field cultivation, plant nurseries and greenhouses. As the Site possess potential for agricultural rehabilitation, the application is not supported from agricultural point of view.
5.	Compatible with surrounding area/development?	✓		The proposed Small House is not incompatible with the surrounding rural landscape character comprising village houses, active/fallow agricultural land and tree clusters (Plan A-2a).
6.	Within Water Gathering Grounds (WGGs)?		✓	Chief Engineer/Construction, Water Supplies Department (CE/C, WSD) has no objection to the application.
7.	Encroachment onto planned road networks and public works boundaries?		✓	
8.	Need for provision of fire service installations and emergency vehicular access (EVA)?		✓	Director of Fire Services (D of FS) has no in-principle objection to the application. The applicant is reminded to observe ‘NTEH – A Guide to Fire Safety Requirements’ published by LandsD.
9.	Traffic impact?	✓		Commissioner for Transport (C for T) advises that Small House development should be confined within the “V” zone as far as possible. Notwithstanding the above, the application involving the construction of only one Small House can be tolerated.

	<u>Criteria</u>	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
10.	Drainage impact?	✓		Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the application and advises that an approval condition requiring the submission and implementation of drainage proposal is required.
11.	Sewerage impact?		✓	Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed development, the application alone is unlikely to cause major pollution.
12.	Landscaping impact?		✓	Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the application from landscape planning point of view as the proposed Small House is not incompatible with the surrounding environment and significant adverse impact on existing landscape resources is not anticipated.
13.	Local objections conveyed by DO?		✓	District Officer (North) (DO(N)) advises that the Chairman of Lung Shan Area Committee has no comment on the application. Other consultees including the Chairman of Fanling District Rural Committee, the incumbent North District Councilor of N18 Constituency, the Indigenous Inhabitant Representative (IIR) and the Resident Representative (RR) of Kan Tau Tusen do not reply.

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Details of comments from government departments are at **Appendix V**.

- (a) DLO/N, LandsD;
- (b) C for T;
- (c) DEP;
- (d) CTP/UD&L, PlanD;
- (e) CE/MN, DSD;
- (f) D of FS;
- (g) DAFC;
- (h) DO(N), HAD; and
- (i) CE/C, WSD.

10. **Public Comments Received During Statutory Publication Period (Appendix VI)**

On 16.8.2022, the application was published for public inspection. During the statutory public inspection period, three public comments were received. While the Chairman of Sheung Shui District Rural Committee indicates no comment on the application, two individuals object to the application mainly on grounds that the proposed Small House development will cause an overcrowding living environment and adverse traffic, environmental and fire safety impacts; lead to inefficient use of land resources; and encourage the expansion of village sprawl into agricultural area.

11. **Planning Consideration and Assessments**

- 11.1 The application is for a proposed Small House at the Site zoned “AGR” on the OZP. The proposed Small House development is considered not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. DAFC does not support the application from agricultural point of view as the Site possesses potential for agricultural rehabilitation.
- 11.2 The Site is covered with grass/trees. It is located at the southwestern fringe of the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen where existing village houses, sites with planning approvals for Small House developments and Small House grant applications being processed by DLO/N, LandsD are found in the vicinity of the Site (**Plan A-2b**). The proposed Small House is not incompatible with the surrounding environment. CTP/UD&L, PlanD has no objection to the application from landscape planning perspective as significant adverse impact on existing landscape resources is not anticipated. C for T considers that the application involving only one Small House could be tolerated. Other relevant government departments, including CE/MN, DSD, DEP, D of FS and CE/C, WSD, have no adverse comment on or no objection to the application.
- 11.3 Regarding the Interim Criteria, the proposed Small House footprint falls entirely within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. DLO/N of LandsD advises that the total number of outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei Tsuen village cluster is 49 while the 10-year Small House demand forecast is 132. Based on the latest estimate by PlanD, about 0.79 ha of land (equivalent to 31 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). In this regard, there is insufficient land within the “V” zone to meet the 49 outstanding Small House applications. As such, the application generally complies with the Interim Criteria as the footprint of the Small House falls entirely within the ‘VE’ and there is a general shortage of land within the “V” zone in meeting the Small House demand. Besides, the Site is the subject of a previously approved application submitted by the same applicant for the same use. Compared with the previous application, the major development parameters and footprint of the proposed Small House are generally the same. It should be noted the Small House grant application has been approved pending the execution of building licence. In this regard, sympathetic consideration might be given to the application.
- 11.4 There are 12 similar applications for Small House development in the vicinity of the Site (**Plan A-2a**). Among them, five applications were approved by the Committee between July 2016 and January 2021 after the Board’s adoption of a more cautious

approach mainly on consideration that there was a shortage of land within the “V” zone of the same village and the site is the subject of previous approval. The planning circumstances of the current application are similar to these approved applications.

- 11.5 Regarding the public comments objecting to the application as detailed in paragraph 10, government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10 above, the Planning Department has no objection to the application.
- 12.2 Should the Committee decide to approve the application, it is suggested that the permission shall be valid until 23.9.2026, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following condition of approval and advisory clauses are also suggested for Members’ reference:

Approval Condition

the submission and implementation of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory Clauses

The recommended advisory clauses are attached at **Appendix VII**.

- 12.3 Alternatively, should the Committee decide to reject the application, the following reason for rejection is suggested for Members’ reference:
- the proposed development is not in line with the planning intention of the “AGR” zone, which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention.

13. Decision Sought

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant the permission.
- 13.2 Should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.
- 13.3 Alternatively, should the Committee decide to reject the application, Members are invited to advise what reason(s) for rejection should be given to the applicant.

14. **Attachments**

Appendix I	Application form with attachments received on 8.8.2022
Appendix II	Relevant Interim Criteria for consideration of application for NTEH/Small House in New Territories
Appendix III	Previous applications
Appendix IV	Similar applications
Appendix V	Detailed comments from relevant government departments
Appendix VI	Public comments
Appendix VII	Recommended advisory clauses
Drawing A-1	Proposed layout plan
Plan A-1	Location plan
Plan A-2a	Site plan
Plan A-2b	Estimated amount of land available for Small House development within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen
Plan A-3	Aerial photo
Plan A-4	Site photos

**PLANNING DEPARTMENT
SEPTEMBER 2022**